

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on January 10, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Linda Holden (R)

Members Absent: Rep. Bill Eggers (D)

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 22, 1/3/2001; HB 82,
1/3/2001; HB 93, 1/3/2001
Executive Action:

HEARING ON HB 22

Sponsor: REP. MONICA LINDEEN, HD 7, Huntley

Proponents: Daniel Dutton, Belfry, MT
Martin Dawson, Belt, MT
Steve Gilbert, Helena, MT
Rep. Sylvia Bookout-Reinicke, HD 71, Alberton
Rep. Jim Shockley, HD 61
Rep. Dan McGee, HD 21, Laurel
Sen. Mack Cole, SD4, Hysham
Susan Teigen, Teigen, MT
Dan Teigen, Teigen, MT
Jeff Barber, Clark Fork Coalition
Clint McRae, Northern Plains Resource Council (NPRC)
Julia Page, NPRC
Tom Ebzery, Quest
Lorna Karn, Montana Farm Bureau
Don Allen, Western Environmental Trade Association
(WETA)
Gail Abercrombie, Montana Petroleum Association
John Alke, Montana/Dakota Utilities Company &
Northern Border Pipeline Company
Mark Fix, Northern Plains Resource Council & Custer-
Fallon Farm Bureau

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.5}

REP. MONICA LINDEEN, HD 7, Huntley, gave a background HB 22. She spoke of eminent domain and the studies that were done on eminent domain in the interim. REP. LINDEEN handed out a publication on Eminent Domain in Montana **EXHIBIT**(nah07a01). She stated HB 22 is a bill designed to protect the private property rights of landowners whose property is taken through the power of eminent domain. It clarifies existing laws by specifically stating that an easement is presumed to be sufficient unless the parties agree that a greater interest (fee title) should be taken or the condemnor shows by a preponderance of the evidence that taking a greater interest is necessary. She also noted that the study committee and the Environmental Quality Council committee agreed that the Department of Transportation should be exempt because the highway department needs fee title in order to create the state's main utility corridors.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 8.1}

REP. DAN MCGEE, HD 21, Laurel, stated that these eminent domain statutes have one purpose, to clarify Montana law. He stated that if you read through Montana law carefully, it seems to imply that an easement would be the preferred method for taking land but it doesn't clearly say that. **REP. MCGEE** stated that he thinks this bill is good for Montana.

REP. JIM SHOCKLEY, HD 61, Victor, stated that there is never a reason to condemn for fee. This is a good compromise.

REP. SYLVIA BOOKOUT-REINICKE, HD 71, Alberton, stated that every one of the Representatives campaigned on property rights and this is a very strong property right. She also stated that when an entity has taken your land and leaves you deserve to get your land back, through easement.

Tom Ebzery, QUEST, stated that he a public member of the EQC subcommittee and spent two years looking at this subject. HB 22 clarifies that an easement is the preference and QUEST does support this bill. He urged the adoption of HB 22 and HB 93.

SEN. MACK COLE, SD4, Hysham, stated that he was the chairman of the eminent domain committee and he would support the adoption of HB 22 and HB 93.

Clint McRae, Northern Plains Resource Council (NPRC), submitted written testimony, **EXHIBIT(nah07a02)**.

Dan Teigen, Teigen, MT, submitted written testimony, **EXHIBIT(nah07a03)**.

Martin Dawson, Belt, MT, urged the committee's support of HB 22 stating that his family ranch was severely impacted by the eminent domain when the Cenex pipeline crossed his ranch. He feels that private property rights need to be protected.

Julia Page, NPRC, stated that she was a public member of the EQC and was on the subcommittee that worked on eminent domain. She stated that this is a clarification making it completely clear that an easement is the preferred interest to be taken in a proceeding and that the burden would be on the condemnor to prove that they needed a greater interest. **Ms. Page** urged the committee's support of the bill.

Steve Gilbert, Helena, MT, stated that in the process of working as a contract biologist for a number of companies in southeast Montana he became familiar with many of the issues facing ranchers and farmers in the Tongue River Valley. He urged the committee to support what there is left which is the opportunity to provide the farmers and ranchers, whose lands can potentially be taken from them, to have the opportunity for this property to remain in their hands at the end of whatever process may take place and that this be handled through the easement arrangement rather than fee titled.

Daniel Dutton, Belfry, MT, submitted written testimony
EXHIBIT(nah07a04).

Gail Abercrombie, Montana Petroleum Association, stated the Montana Petroleum is in support of this piece of legislation.

Don Allen, Western Environmental Trade Association (WETA), stated that WETA thinks this is a good piece of legislation and asks for a do pass from the committee.

Jeff Barber, Clark Fork Coalition, submitted written testimony
EXHIBIT(nah07a05).

John Alke, Montana/Dakota Utilities Company & Northern Border Pipeline Company, stated that he supports this bill.

Mark Fix, Northern Plains Resource Council & Custer-Fallon Farm Bureau, was not present but did submit written testimony
EXHIBIT(nah07a06).

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 29}

REP. STORY asked **SEN. COLE** about the tax consequences of easements when they have been significantly changed. **SEN. COLE** stated that if a property stays in your name in an easement then you would still be the tax payer on it.

REP. HARRIS asked **SEN. COLE** why the Department of Transportation is exempt from the provision that expresses the preference of an easement? **SEN. COLE** stated that the Department of Transportation, because of federal funds involved in it, has to

have a fee status. **REP. HARRIS** then asked **SEN. COLE** why there is nothing in the bill stating that when the purpose of the easement expires the property right reverts back to the property owner?

SEN. COLE stated that if you have an easement on something and it is no longer of use, it is property that belongs to you as you have never given up your ownership of your land. He also stated that he doesn't believe it is necessary to have that stated in the bill. The question was then referred to **REP. LINDEEN** who stated that the issue is already addressed in statute under §70-30-321.

REP. HARRIS asked the Department of Transportation to shed light on why they need a full property right. **Nick Roterling, Staff Attorney, Montana Department of Transportation**, there is a federal requirement that when the department acquires certain lands for the interstate, primary highways, etc. they want the department to own it.

REP. BROWN thanked the members of the eminent domain committees for their hard work.

REP. LIABLE asked **REP. LINDEEN** if there is an easement is there a payment for the use of that easement and who determines what that is? **REP. LINDEEN** answered, yes there is compensation and it is usually discussed between the property owner and the company wanting to use the land. If an agreement cannot be reached then the power of eminent domain can and is used. In that case the courts determine what the compensation will be.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 37.9}

REP. MONICA LINDEEN, HD 7, Huntley, thanked everyone involved in this bill. She also stated that we, as a state, need to continue a public policy that says when we take property away from our citizens, involuntarily, we are taking the absolute minimum property interest that is necessary and that all property interest should be in easement first and fee title second, whenever possible, and that landowners should be able to retain ownership of the property and the underlying property rights that accompany it. It is important to remember that agriculture is Montana's number one industry and we should take care to look out for the interest of Montana's agriculture. She urged the committee's support in this bipartisan effort.

Sponsor: REP. KIM GILLAN, HD 11, Billings

Proponents: Daniel Dutton, Belfry, MT
Martin Dawson, Belt, MT
Steve Gilbert, Helena, MT
Rep. Sylvia Bookout-Reinicke, HD 71, Alberton
Rep. Jim Shockley, HD 61
Rep. Dan McGee, HD 21, Laurel
Sen. Mack Cole, SD4, Hysham
Susan Teigen, Teigen, MT
Dan Teigen, Teigen, MT
Jeff Barber, Clark Fork Coalition
Clint McRae, Northern Plains Resource Council (NPRC)
Julia Page, NPRC
Tom Ebzery, Quest
Lorna Karn, Montana Farm Bureau
Don Allen, Western Environmental Trade Association
(WETA)
Gail Abercrombie, Montana Petroleum Association
John Alke, Montana/Dakota Utilities Company &
Northern Border Pipeline Company
Mark Fix, Northern Plains Resource Council & Custer-
Fallon Farm Bureau
Leo Berry, Conoco
Steve Wade, Burlington Santa Fe Northern Railway
Company
Russ Ritter, Montana Railink

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 41.1}

REP. KIM GILLAN, HD 11, Billings, stated that HB 93 addresses the issue of appropriate payment for damages to property proposed to be taken as well as to any remaining parcel of property within the preliminary and final condemnation orders. Under this bill there is direction given to the courts to determine the appropriate payment for damages to property, directly and indirectly affected by the project. **REP. GILLAN** stated that the important thing about HB 93 is the explicit procedures or provisions for dealing with the damages to any piece of property. **REP. GILLAN** handed out a copy of the flow diagram of Montana's Eminent Domain Process **EXHIBIT (nah07a07)**. She also mentioned that she will have one amendment to the bill **EXHIBIT (nah07a08)**

and that **John Alke** has another amendment and both of the amendments need to go in tandem.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 44.8}

REP. DAN MCGEE, HD 21, LAUREL, quoted the Montana Constitution stating, "Private property shall not be taken or damaged for public use without just compensation..." The whole process is to try to clarify what already is in Montana law. He then encouraged the committee's support of this bill.

REP. SYLVIA BOOKOUT-REINICKE, HD 71, Alberton, stated that she is a strong supporter of property rights and this bill. She hopes for a do pass.

Clint McRae, Northern Plains Resource Council (NPRC), submitted written testimony Exhibit (1).

Julia Page, NPRC, added that the power of eminent domain is used a lot in Montana, although only a few go to condemnation and courts. She urged support of HB 93, an attempt to clarify a land owner's right to adequate compensation.

Lorna Karn, Montana Farm Bureau, supports this bill as it clarifies land owners' rights and hopes for a do pass.

Dan Teigen, Teigen, MT, submitted written testimony, **EXHIBIT** (nah07a09).

Martin Dawson, Belt, MT, spoke about the impacts of eminent domain on his family ranch. He stated that the private property rights need to be protected. He showed the committee pictures of how his property and how it was affected.

Jeff Barber, Clark Fork Coalition, submitted written testimony Exhibit (5).

Steve Gilbert, Helena, MT, stated, as a contract biologist on the Tongue River he was hired to look at impacts to specific groups of species. Landowners not only have to be compensated for the property that is affected directly but also for those aspects of their property that are indirectly affected by the process such as a power line, railroad line, etc. Often the indirect damages done to the property are greater than the direct damages. From the wildlife perspective, these damages affect the migrations of the animals, etc. **Mr. Gilbert** urged a do pass and noted that

these people need to be compensated for indirect impacts, secondary impacts and direct impacts.

Daniel Dutton, Belfry, MT, submitted written testimony Exhibit (4).

{Tape : 1; Side : B; Approx. Time Counter : 1.6}

John Alke, Montana/Dakota Utilities Company & Northern Border Pipeline Company, handed out a proposed amendment **EXHIBIT**(nah07a10). The amendment would correct a mechanical error in the bill. He stated that they fully support the bill with the proposed amendment.

Don Allen, Western Environmental Trade Association (WETA), stated that he believes the bill needed to include **Mr. Alke's** amendment and **WETA** supports this bill.

Leo Berry, Conoco, supports the bill, including the amendment. He encouraged the committee to adopt the amendment.

Steve Wade, Burlington Santa Fe Northern Railway Company, stated that they support the bill and the amendment.

Gail Abercrombie, Montana Petroleum Association, stated that they are in favor of this bill and the amendment.

Russ Ritter, Montana Railink, stated that they support the bill and the amendment.

Martin Dawson, Belt, MT, spoke again about the pictures he passed around the committee.

REP. MONICA LINDEEN, HD 7, Huntley, stated that she supports HB 93.

SEN. MACK COLE, SD4, Hysham, stated that he was the chairman of the eminent domain committee and he would support the adoption of HB 93.

Mark Fix, Northern Plains Resource Council & Custer-Fallon Farm Bureau, was not present but did submit written testimony **EXHIBIT**(nah07a11).

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 10.5}

REP. ERICKSON asked **REP. GILLAN** is there a section of the law that lists all of the kinds of damages that you can go after or does a judge decide this? **REP. GILLAN** referred the question to **Krista Lee** referred the committee to §70-30-110(2). Further in the bill it is determined what the appropriate payment would be for any appropriate damages. Followup by **REP. ERICKSON**, gave an example of this where a property was damaged 25 years prior and a company came in then and bought it for a very small amount of money. What would the property owner been able to do if he had this act? Do these property owners have to try to predict the future selling ability of the property? **Krista Lee** stated that there is additional statutory language in addition to this bill that would address this. She stated that she doesn't think there is any way that you can legislate something that may happen in the future. **REP. ERICKSON** stated that it is his concern that you can't anticipate some future damages. Do land owners have to think creatively 30 years out? **Krista Lee** said, yes, and this only comes into play when there is actually a condemnation, anything else is handled through negotiations. **REP. ERICKSON** asked if it is feasible for us to imagine that state government ought to be able to be more directly involved in helping people, to ask the right questions about future damages? **REP. GILLAN** answered that one of the issues that came out during the hearings around the state was that land owners with varying levels of legal assistance felt that they did or did not have information of what their rights were. The Eminent Domain in Montana booklet **Exhibit (1)** will provide information for these land owners.

REP. GUTSCHE asked **REP. GILLAN** to explain the amendment to the bill. **REP. GILLAN** referred the question to **Krista Lee**. She stated that a majority of the amendment was clean up language, this statute is very old and hard to understand. The part that is substantive that directly affects this bill is on the amendment, page 2(3)(e).

REP. BROWN asked **REP. YOUNKIN** if they can discuss the amendments. **REP. YOUNKIN** stated no, the amendments would be taken up on executive action.

REP. LIABLE asked **REP. GILLAN** if an easement went through a piece of property and cut off a section, part of the resolution of this could be mitigation to allow access to that property, as well as compensation, this would be part of the committee's work? **REP. GILLAN** answered, yes, you are correct in that assumption.

REP. HURDLE asked REP. GILLAN about the effective date. REP. GILLAN stated that would be effective on passage and approval. Larry Mitchell clarified that it is actually October 1st.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 21.7}

REP. KIM GILLAN, HD 11, Billings, stated that this was a very complex and contentious discussion with regard to eminent domain. She remarked that it is critical to understand the context in which these bills have come forward. She urged the committee's support of the bill and the amendments.

HEARING ON HB 82

Sponsor: REP. DANIEL C. FUCHS, HD 15, Billings

Proponents: Stan Frasier, Helena, MT

REP. AUBYN CURTISS, HD 81, Fortine

Gary Marbut, Montana Shooting Sports Association

Opponents: Roy Andes, MonTRUST

Nancy Schlepp, Montana Farm Bureau Federation

John Bloomquist, Montana Stockgrowers Association

Paige Dringman, Montana Landowners Alliance

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 24.1}

REP. DANIEL C. FUCHS, HD 15, Billings, stated HB 82 is a bill to exempt resident Montanans from the state land access fee which was established in 1991. He believes that every session there has been a bill to get rid of this fee.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 25.6}

Stan Frasier, Helena, MT, stated that he was involved in the process of setting the rules for the state land access. He then gave a history of this. Mr. Frasier stated that in his opinion, the intent of some people was not to raise money for the schools but to set the access fee at such a high rate that it would discourage the public from using those lands. He thinks the fee, even at \$10.00, has that effect. He thinks this fee should be

added to the conservation license. He supports the bill strongly.

REP. AUBYN CURTISS, HD 81, Fortine, stated that she stands in support of this bill. Her county is 75% state and federally owned and even the local residents don't know what is the difference between what is U.S. forest property and what is State Land Department property. She believes access to this land is a right of residency.

Gary Marbut, Montana Shooting Sports Association, was not at the hearing but did submit written testimony **EXHIBIT**(nah07a12).

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 32.9}

Roy Andes, MonTRUST, submitted written testimony **EXHIBIT**(nah07a13).

John Bloomquist, Montana Stockgrowers Association, gave some history of the land access fee. He stated that a fee to the trust is required. There is no getting around the school trust fund obligation, these are not technically public lands, they are school trust lands. He stated that there are a lot of different views on what the fees should be. **Mr. Bloomquist** said that saying that residents would not pay for the use of state land is probably unconstitutional. Differentiating between residents and non-residents could be an issue.

Nancy Schlepp, Montana Farm Bureau Federation, stated that they stand in opposition of this bill. They feel that it is important that anyone that uses state lands should have to pay a fee. She is concerned that without a fee there would be an increased use with no responsibility.

Paige Dringman, Montana Landowners Alliance, stated that they stand in opposition of this bill. She asked, does recreational use have a value to the school trust, and stated, yes, clearly it has a value. There are large impacts of recreational use of this land and it should be compensated.

Informational Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 46.2}

Bud Clinch, Director, Department of Natural Resources and Conservation, stated that as director and previously as the commissioner of state lands, he has been intimately involved in

the discussions and debates surrounding these fees since 1993. He then showed the committee the land status map of the state of Montana, pointing out the lands this bill affects. The lands represent about 5.2 million acres and about 2/3 of those acres are legally accessible. He then gave a "factual" history of this fee and bills that have been proposed. He stated that for 10 years there have been revenues collected and that in one recent year about 37,000 of these licenses generating about \$375,000. Therefore, there is a very documented history of the willingness to pay. Throughout the last decade there has been an increasing recognition and acknowledgment at the legislative body, at the land board and among the public at large about the recognition that school trust lands are different than other federal lands and state lands and they come with specific mandates. He stated that the program has been implemented in an improved fashion year after year, the controversy associated with it has generally decreased. He hopes that the committee's deliberations are made with a full knowledge of the history and debate and the consequences associated with the action of the committee.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 60.1}

REP. ERICKSON asked **Roy Andes** whether or not there is any kind of compromise possible on rates, in particular, if rates were lower we would get more people using the lands. Does MonTRUST believe this? **Mr. Andes** stated that you would probably get more money for the trust by tagging the fee onto the conservation license but that is not a part of this bill. The land board has petitioned for rule making to raise the recreational use fee as well as the grazing fees. Therefore, this issue will be revisited in one form or another.

REP. HURDLE asked **Roy Andes** how the grazing fees in Montana compare with those in the surrounding states, is there a trust obligation there? **Mr. Andes** answered, yes, there is a trust obligation there. **REP. HURDLE** then asked what the grazing rate is. ***{Tape : 2; Side : A; Approx. Time Counter : 0.1}*** **Mr. Andes** stated there is a very complex formula and did not want to speak of it as he may misinform the committee.

REP. GUTSCHE asked **Bud Clinch** about past bills regarding this issue and how many have passed. **Mr. Clinch** stated that he believes every year, except 1995, there have been 2 or more bills in the session and none of the bills have passed.

REP. MOOD asked **Roy Andes** who the MonTRUST clients are. **Mr. Andes** answered that MonTRUST is a grassroots organization funded

by a \$25.00 per year membership fee. **REP. MOOD** asked if the schools are represented in the organization? **Mr. Andes** answered, not at this time.

REP. MOOD asked **Bud Clinch** what are these lands, school trust lands, public lands or school lands? **Mr. Clinch** stated all of the terms are commonly used interchangeably, yet, there is a distinct difference. School trust lands have specific mandates where public lands are for everybody. **REP. MOOD** asked **Mr. Clinch**, as director of the DNRC, you must maximize revenue for those lands, is it not? **Mr. Clinch** answered that is correct. **REP. MOOD** then asked, if some entity were to be successful in eliminating the possibility of gaining generated revenue for the school trust land in the current matter that you do it, would you be obligated to sell the land and generate money that way? **Mr. Clinch** answered, that is precisely correct.

REP. LIABLE asked **Bud Clinch** if there was money added to the conservation license and the school trust itself is not generating the dollars, would you still have to sell off school trust land in order to generate dollars for that. **Mr. Clinch** stated no, adding this fee to the conservation license has been discussed multiple times until recently the Department of Fish, Wildlife and Parks has found that unworkable because of the collection of the money, etc.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 13.4}

REP. DANIEL C. FUCHS, HD 15, Billings, pointed out every session there has been one bill or more on this issue and the people who bring forth the legislation are representatives of the people in their district and the opponents are paid to be here. If this legislation keeps coming forward, the constitutionality issue needs to be decided by the legislature. He spoke about the fiscal note and the necessity of the fee.

ADJOURNMENT

Adjournment: 5:30 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah07aad)